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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,603

01/05/2004

Carrie Johnson

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EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

07/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/751,603	<b>Applicant(s)</b> JOHNSON ET AL.	
	<b>Examiner</b> Phylesha L. Dabney	<b>Art Unit</b> 2614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to the Application filed on 5 January 2007 in which claims 1-20 are pending.

#### ***Claim Objections***

Claim 7 is objected to because of the following informalities: the grammatical article “an” is incorrect. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1-3, 5-6, 9-13, 15-16, and 19-20** are rejected under 35 U.S.C. 102(b) as being anticipated by Glazer et al U.S. Patent No. 2,581,251).

Regarding claim 1, Glazer teaches a weather guard, comprising: a frame (fig. 1) comprising a plurality of interconnected rigid members defining a supporting structure, the frame further comprising: a pair of opposed horizontal transverse members (roof, 11) rigidly attached to a pair of opposed cross members (W1-W3) substantially perpendicular to the transverse members forming a substantially horizontal rigid body; at least one downwardly extending vertical support member (10, 15) connected to the horizontal rigid body, the at least one vertical support member is connected to one of the cross members; at least one bracket (near 10, fig. 3)

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comprising a first end and a second end, the first end is attached to the horizontal rigid body and the second end extends downwardly at an angle  $\theta$  to the vertical support member, wherein the second end of the at least one bracket is attached to the vertical support member; and a membrane (sound absorbent material, col. 3 lines 25-40) attached to the frame defining an opening, wherein the membrane forms a shield against environmental conditions inside the opening.

Regarding claim 2, Glazer teaches the weather guard of claim 1, further comprising two opposing downwardly extending vertical support members (10, 15) connected to each one of the corresponding cross members of the substantially horizontal rigid body.

Regarding claims 3, Glazer teaches the weather guard of claim 1, further comprising two brackets (near 10) attached to any one of the opposing cross members, the transverse members, and an intersection point thereof.

Regarding claim 5, Glazer teaches the weather guard of claim 1, wherein the vertical support member (10) is extendable.

Regarding claim 6, Glazer teaches the weather guard of claim 5, wherein the vertical support member (10) is telescopically extendable.

Regarding claim 9, Glazer teaches the weather guard of claim 1, wherein the membrane

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is a single impermeable membrane (sound absorbent material, col. 3 lines 25-40).

Regarding claim 10, Glazer teaches the weather guard of claim 1, wherein the membrane is a plurality of impermeable membranes (sound absorbent material, col. 3 lines 25-40) in the form of individual panels that are separately attached to the frame.

Regarding claims 11-13, 15-16, and 19-20, see the corresponding rejections above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **4, 7-8, 14, and 17-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Glazer et al.

Regarding claims 4, 7-8, 14, and 17-18, Glazer fails to teach the weather guard of claim 1, further comprising a first leg and a second leg for anchoring the weather guard into the ground, wherein one end of the first and second legs is attached to the attached at one end to a corresponding vertical support member; further comprising a horizontal transverse brace member attached between the vertical support members; and/or further comprising a fastener for removably attaching the weather guard to any one of an enclosure and an exterior portion of the structure around an opening thereof.

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However, the Examiner takes official notice that it is known in the art to provide anchoring means for securing the weather guard to a stationary structure.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a anchoring means in the invention of Glazer as taught for the reason stated.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**Any response to this action should be mailed to:**  
Commissioner of Patents and Trademarks  
P O Box 1450  
Alexandria, VA 22313-1450

**Or faxed to:**  
(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.


**Hand-delivered responses should be brought to:**  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 17, 2007

PLD

  
CURTIS KUNTZ  
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